



The Duty to Dissent

Do the citizens of a participatory liberal democracy have a political duty to practice civil disobedience?

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Introduction

Throughout the history of 20th century democracies such as the United States, protest movements that encompassed both campaigning to spread awareness as well as breaking the law to highlight injustice have succeeded in overturning laws and securing legislation that has brought civil society closer to a state of justice. Prominent examples include the suffragist movement and civil rights campaigns. While these past movements often receive glowing praise both in popular media and in the literature, protest movements that are active in the present are often controversial. Although many political theorists and social commentators have justified breaking the law in the cause of justice, very few would argue that civil disobedience serves a function so important that its practice should constitute a duty of citizenship. This is despite the contributions protest movements have made to society that are widely recognized as essential.

In addition to ending segregation and disenfranchisement for women, contributions made to society through civil disobedience include the establishment of the minimum wage and 40-hour work week after extensive sit-down protests in the 1930s. The creation of the US itself came about following unrest, such as the Boston Tea Party, due to political grievances. Anti-war protesters and conscientious objectors have ensured US military intervention in South East Asia and the Middle East remains controversial, and environmental activists have raised awareness and secured legislation related to ecological concerns. Democracy would be impoverished without citizens prepared to organize and promote such activities, which justifies regarding unlawful protest as legitimate and sometimes vital political participation.

In this dissertation I will argue that there is a duty to dissent that extends to breaking the law, and that it is a political and not simply a moral duty. Many writers have defended civil disobedience of the type I will describe, conceived of as a mode of political

speech that serves to communicate grievances to the government and to society at large. However, they fall short of endorsing a *duty* to dissent. Their accounts are characterized by limitations and extensive criteria that must be met before civil disobedience is warranted. I will ground my approach to civil disobedience from the perspective that we should not consider there to be a perfect duty to obey the law, because it is maintained and enforced by human beings that are ultimately fallible. Crucially, I will show that there is a structural need for a certain level of willingness to break the law and so there is no invalidating conflict with the general duty of citizens to be law-abiding.

In the first section I provide the definition of civil disobedience that I will use throughout, grounded in various conceptions found in the writings of John Rawls, Peter Singer, and Joseph Raz. Broadly, I regard protest action as a type of political speech which those who suffer from or recognize injustice can use to communicate their objections to the government and advocate for change. In the second section, I'll put forwards the two strongest arguments for it.

First, I argue that the majority rule characteristic of democracies prevents minorities from advocating for justice effectively without assistance from a socially conscious citizenry, creating the need for a civic obligation to dissent rather than relying upon personal motivations. Second, I will argue that a population that privileges obeying the law risks creating the conditions for a deterioration of liberal values and can potentially enable the government to become undemocratic. Then I will consider what reasonable limitations should be imposed on the duty to dissent to resolve its conflict with the duty to be law-abiding.

With these two positive arguments on the table, in the third section I will examine the primary objection that could be raised to the duty of dissent: that arming citizens with a positive duty to break the law to achieve political objectives based on their personal appraisals would undermine the deliberative processes essential to the functioning of democracy and sponsor mass unrest leading to anarchy. I'll provide two responses to this objection. First, that it is a slippery slope fallacy, and the threat of anarchy is a counterbalance to the threat of totalitarianism or other disastrous outcomes resulting from iniquitous government. Second, that the common sense of justice is comprised of an

amalgamation of the personal appraisals of citizens and so it would be paradoxical to oblige them to defer to it.

My conclusion is that endorsing a defeasible duty to dissent, extending to unlawful acts but limited by rational assessment of needs and the self-interest of the dissenters, would act as a stabilizing influence on society and serve to bring it closer to a state of justice.

1.1 Civil disobedience and the duty to dissent

I define the duty to dissent as a civic obligation to engage with the public sphere, registering dissatisfaction or disapproval, with the goal of moving civil society towards a state of justice. The main claim I want to defend is that this duty extends to unlawful acts, generally referred to as civil disobedience. Many political philosophers believe that civil disobedience can be permissible, but I propose that civil disobedience is sometimes a civic duty. Underpinning this claim is the fact that a liberal democracy in name alone cannot function. Its citizens as well as its institutions must regard the pursuit of justice as an indispensable goal, privileged over the maintenance of tranquility.

In defining civil disobedience, political theorists and philosophers have assembled a family of similar conceptions which differ in certain key respects. However, it is not necessary to endorse any one of these conceptions to defend the duty to dissent. I will instead refer to several writers throughout, principally Rawls, Raz, and Singer. There are broad themes common to all three – civil disobedience as a type of political speech that is illegal, non-violent, and seeks to communicate dissatisfaction or disapproval aimed at some law or policy with the goal of altering or overturning it.

Howard Zinn's characterization of civil disobedience matches closely the spirit in which I conceive of it: "Civil disobedience is the deliberate, discriminate violation of law for a vital social purpose. It becomes not only justifiable but necessary when a fundamental human right is at stake, and when legal channels are inadequate for securing that right. It may take the form of violating an obnoxious law, protesting an unjust condition, or symbolically enacting a desirable law or condition. It may or may not eventually be held legal, because of constitutional law or international law, but its aim is always to close the

gap between law and justice, as an infinite process in the development of democracy” (p119).

The only controversial element of civil disobedience relevant to the duty to dissent is the non-violence criteria. While I agree that violence may come to be necessary in the resolution of some political crisis, I do not think that a citizen’s obligations can include pursuing a course of action to violent ends. The goal of democracy is an equitable social arrangement arrived at through reason and discussion rather than the imposition of force, so a need for violence would signal a breakdown of democratic processes that makes the term ‘civil disobedience’ inapplicable (Rawls, p366). Besides non-violence, I do not think that the various other criteria – such as requiring that protesters submit to punishment or act publicly and openly – have any bearing on whether or not civil disobedience may be regarded as a civic obligation.

Another important qualification is that it is in the context of participatory liberal democracies characteristic of western states in the latter 20th century that I want to argue this duty obtains. My claim is not about a platonic ideal of citizenship – the circumstances motivating my argument come from the history of western democracies, specifically the US. This is a point of departure from key texts, many of which make idealistic normative claims about the states in which civil disobedience can justifiably occur. Rawls defended civil disobedience as it obtains in a “more or less just democratic state” (p363) and argued that it had to be motivated by a violation of the common sense of justice of that society. Raz argued that civil disobedience in a democratic state is “beyond the bounds of toleration, beyond the general right to political action” (p273). He rejected the political right to civil disobedience in any liberal state where the right to adequate political participation is properly defended by the law.

I think that these restrictive criteria undermine a robust description of civil disobedience, especially in the context of civic obligation. The problem is that citizens may be easily mistaken about whether these normative claims match up with their lived experience or not; the common sense of justice of a society, or if it is ‘more or less just’, is difficult to evaluate. So is the matter of whether the right to political participation is adequately established and protected. It’s only pragmatic to expect that there will be some

nuance in such matters. A society may be close to just for most of its members, but distinctly unjust for a small minority - consider the US during the Jim Crow era. Similarly, the procedures securing the right to political participation may be enshrined in law but the right in practice can be abridged due to bungled execution or deliberately unequal enforcement.

Worse, not only may the public be unclear as to these points, there is good reason to think they will be deliberately misinformed. Most governments wish to project the appearance of legitimacy, as general elections in Russia or votes in the National People's Congress in China attest. Unlike those countries, the US has an independent press that supposedly acts to keep the public informed about political matters. But after extensive analysis of the news media's reporting of controversial issues, Noam Chomsky and Edward Herman concluded that "the mass media of the United States are effective and powerful ideological institutions that carry out a system-supportive propaganda function by reliance on market forces, internalized assumptions, and self-censorship" (p306).

Therefore, I think that the debate over civil disobedience is most illuminating when conducted in the context of the question 'what obligations do citizens of particular countries have in the present time, given the distinct backgrounds of their societies?'. I also think it is preferable not to set any hard limits on what type of acts should be considered to constitute civil disobedience. So long as an illegal act serves as political speech seeking to oppose some policy or law, it will meet my definition of civil disobedience. I invoke a restriction on violence simply because it is irreconcilable with the ordinary course of events in a democracy, and I am concerned with defining a duty of dissent congruous with democratic principles. In the next section, I will present positive arguments in support of the duty to dissent.

1.2 Why a political duty, beyond a moral right?

Michele Moody Adams distilled the concept of conscientious citizenship from an analysis of Martin Luther King's speeches and writings. This is the idea that we have a duty to bring about just institutions through resisting injustice in our society, as well as the injustices it is instrumental in bringing about for non-members, while maintaining respect for the rule of law (Moody Adams, p423). It is just such an ethos of committing civil

disobedience in response to injustice that I promote under the duty to dissent. However, moral duties and political duties are distinct. Arguing that poverty-stricken people who live in ghettos do not have the same duties as citizens better served by the social order, Tommie Shelby stated that “it is necessary to distinguish the civic obligations citizens have to each other from the natural duties all persons have as moral agents” (p2).

Many prominent figures have advocated for the legitimacy of carrying out acts of civil disobedience based upon purely moral considerations. Martin Luther King appealed to universal human values derived from his religious faith to support his actions (p78), and Henry David Thoreau cited his moral condemnation of the war against Mexico and the institution of slavery as a justification when he refused to pay taxes (p129). It is generally agreed that our duty to be moral overrides other duties. For example, if we enter into a contract with somebody but find out later that there is an immoral element to fulfilling the agreement, it seems reasonable to prefer to shirk our duty to make good on our commitments rather than commit a wrongful act.

The same may be said of our duty to uphold the ‘social contract’. Raz argued that any society that failed to protect its citizen’s rights to adequate political participation thereby entitled them to “exercise their moral right as if it were recognized by law” (p273). However, I claim that the duty to dissent is part of the political duties incumbent upon citizens of participatory liberal democracies. It therefore cannot be justified through nullification of the social contract. It’s important to delineate it as a political duty so that it can be properly weighed against the duty to be law-abiding, with which it comes into conflict.

The duty to be law-abiding is well established and widely regarded, so there is a danger that too many citizens forgo acts of civil disobedience out of misguided deference to it and subsequently come to tolerate injustice. Zinn points out that history is replete with examples of populations submitting to or tolerating the infliction of inhumane conditions, while examples of successful resistance to injustice are far less common (p17). For example, African Americans suffered from the terrible violence of chattel slavery from 1619 until the formal end of the Civil War in 1865, and then further endured life under Jim Crow segregation laws until 1965. During this 346-year period, rebellions and uprisings like the one led by Nat Turner accomplished little except provoking ever-harsher laws oppressing

the slave caste. Violent suppression and forced displacement were also inflicted upon the indigenous inhabitants of the present-day US and Mexico, and enjoyed the acquiescence of mainstream society for centuries.

There are two strong reasons for thinking that there is a political duty to dissent. The first is that minorities in a democracy - as well as those not afforded the rights of citizenship, such as slaves, immigrants, and non-members - are structurally susceptible to suffering due to the problem of the tyranny of the majority. Because of disparities in the levels of political influence and sheer numbers between different groups in society, some may be routinely ignored, outvoted, and overruled. The poverty-stricken ghetto residents described by Shelby (p2) are a pertinent example. The duty to dissent would help to solve this problem, by obligating outside voices to bolster the attempts of minorities group to secure justice.

The second reason to endorse the duty to dissent is that it is required to work against the forces of corruption, incompetence and bad faith governance as they erode liberal values in a democracy. As Thoreau put it, the concern is that the US government (and others like it) is a tradition "endeavoring to transmit itself unimpaired to posterity, but each instant losing some of its integrity" (p28). If the duty to be law-abiding is respected but the duty to dissent is not, there is a danger that citizens will too often take a neutral stance towards injustice which will encourage its propagation over time.

I'll now expand upon these two arguments, and then outline some reasonable limitations on the duty to dissent that should resolve any unwelcome conflict with the duty to be law-abiding.

2.1 Assisting minorities in overcoming the tyranny of the majority

Since majority rule is fundamental to the nature of democracy there is a tendency for majority groups to ignore the interests of minority groups, sometimes to their detriment. Even if that minority protests vociferously, they may be dismissed as entitled malcontents by a public discourse dominated by majority interests. Such majority domination is not always simply the necessary product of resolving conflicts between strongly held yet opposing beliefs; the majority can care very little about something that deeply affects a

vulnerable minority and so oppress them indirectly as a side effect of facilitating frivolous conveniences or without even being conscious of doing so (Singer, p123). Worse, powerful groups may ride roughshod over even majority interests in a democracy due to exercising disproportionately strong political influence.

For example, polls have shown that 77% of US citizens support laws making citizens unable to vote without first showing photo ID, purportedly due to concerns over voter fraud (Heimlich, 2012). While seemingly reasonable, the problem is that voter ID laws disproportionately affect voting eligibility for those with low socioeconomic status due to the inaccessibility of photo IDs for that group (Stanley, p69). And actual instances of voter fraud are vanishingly insignificant, only occurring at rates of between 0.0003% and 0.0025% (Levitt, pp13-15). The majority's shallow apprehension of both the effects of voter ID laws and the realities of voter fraud could therefore result in needless disenfranchisement for many citizens. This example is especially pertinent to a discussion of civil disobedience because any affected citizens would lose their access to standard political participation.

If the proper function of civil disobedience is to seek the redress of grievances, it will require a certain critical mass to be successful. Otherwise it will be too easily ignored or rationalized away by the majority. While the directly oppressed have both a moral justification and a personal motivation to engage in acts of protest, there are certain costs – time, material resources, and the risk of punishment including jail time – that will deter those who are satisfied by the moral principles justifying the act of protest but not actually suffering from the injustice themselves. Absent a political duty of dissent that extends to acts of civil disobedience, citizens may reasonably feel satisfied that the duty to be orderly and obey the law means they are under no compulsion to try and secure justice for minorities outside of the normal political procedures.

The tyranny of the majority does not affect only small groups of citizens. Wealth inequality compounds the problem of iniquitous majority rule in modern day representative democracies; politically powerful groups constitute only a small minority of the population but control a majority share of the wealth. Gilens and Page analyzed support for various policies across class divisions during the latter 20th century and found that 45% of policies favored by 80% of the wealthiest citizens were instituted, compared to only 18% of policies

that the same proportion of elites opposed (p574). They concluded that “economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while average citizens and mass-based interest groups have little or no independent influence” (Gilens and Page, p564). Therefore, the problem of tyranny of the majority does not only affect groups that constitute minorities by sheer numbers. Economically, most US citizens are in a minority group and their ability to access legitimate political representation reflects that fact.

If the duty to dissent is granted, then those who recognize that an injustice is unlikely to be remedied through standard political procedure due to the problem of tyranny of the majority have a civic obligation to take further action to oppose that injustice. Without this compulsion, protest action may not function effectively to redress grievances as provided for by the First Amendment.

2.2 Civil disobedience as a safeguard against tyranny

The second reason that a political rather than a moral duty to dissent should be recognized is that civil disobedience serves as one of the necessary checks and balances preventing the government from becoming despotic. The complacency of citizens in a liberal participatory democracy could enable the development of a tyrannical government, whether due to a deliberate project of subversion by the class of political elites, corruption by private interest groups, or simply incompetent governance.

Economists describe the ‘tragedy of the commons’ – self-interested individuals worsening conditions for everybody, including themselves, by prioritizing short-term personal gains. Similarly, citizens may be united in accepting that protest is morally justified but still desist due to rational assessment of their own self-interest. The potential punishment may be too harsh, or the chance of achieving their goal too slim. If the choice to risk engaging in civil disobedience is only influenced by moral principles outside the schema of citizenship, there is the danger that the government will simply make sure the costs of dissent are prohibitively high.

Going further, a failure to protest injustice effectively could actually induce despotism. Governments are not infallible: over time either unjust laws or policies will be introduced, or just laws or policies will be unevenly or incompetently enforced such that a state of injustice is created. If ordinary political procedures fail to prevent such injustices, then protest action is left as the last resort. Given that the government is compromised – either there are constituent elements deliberately pursuing the degradation of democracy and liberal values, or a state of justice is not maintained due to mismanagement – private citizens are de facto the only remaining agents capable of restoring justice.

Consider two scenarios to illustrate this point. In the first, an unjustified war is started after a campaign of misinformation spread by a disproportionately influential minority in the government who seek to personally profit. There are no citizens who suffer oppression as a direct result so there is nobody for whom protesting the war is morally compelling enough to sacrifice their resources or otherwise act contrary to their self-interest. This is despite the fact that, if enough people organized in opposition, each individual has a very small chance of actually being punished. Delighted that they have suffered no political costs, the corrupt politicians are emboldened and subsequently become more inclined to risk pursuing unjust policies for personal gain.

In the second scenario, a citizenry armed with the duty to dissent feel compelled to pursue a campaign of civil disobedience establishing opposition to the war, even though it is not exacting any toll on them personally. The corrupt politicians' bluff is called, potentially ending the war. At the very least, the perpetrators will be forced to contend with negative publicity and unrest that serves to disincentivize them from pursuing similar policies in future. The function of a duty to dissent would be to ensure that the second scenario is standard. When civil disobedience is the only remaining potential obstacle to an unjust act or law, citizens in a position to protest who instead acquiesce are rightly viewed as having shirked their civic duty: to produce negative political outcomes for the perpetrators of that injustice.

The actual history of warfare in the US during the past century demonstrates the need for civil disobedience beyond ordinary political participation. Conventional checks and balances have proven insufficient for averting the resolution of political crises with violence,

and the rights of citizens have been infringed upon to quell dissent. Often, both major party Presidential candidates endorse war, regardless of public opinion. More frustratingly, a candidate may campaign on an anti-war platform but then fail to make good on it. This happened in 1964, when Lyndon B. Johnson ran as the “peace candidate” against his pro-war opponent Barry Goldwater but then greatly escalated the conflict in Vietnam the following year (Lerner, p752). Barack Obama also broke campaign promises to end the wars in Afghanistan (Ryan and DeYoung, 2016) and Iraq; while there were significant troop withdrawals, they were replaced by an extensive campaign of both conventional airstrikes and drone bombings (Benjamin, 2017).

Of course, US citizens’ electoral influence is not limited to the President. They could still achieve representation through Congressional elections. However, Congress has demonstrated an unwillingness to oppose the President when it comes to warfare. No formal declaration of war was made during the Vietnam conflict, and while Lyndon B. Johnson gained congressional approval his successor, Richard Nixon, did not. In 2001, the Patriot Act was overwhelmingly approved by Congress. This included an unlimited authorization for the use of military force, so in the modern era the President can wage war without any further approval from the legislative branch.

My two scenarios could be accused of constituting a ‘slippery slope’ argument, like the accusation that civil disobedience leads to mass disorder. But historically, civil disobedience has not precipitated wider unrest. Civil rights protests did not continue to gather momentum after the government passed the Civil Rights Act, nor did the suffragist campaign escalate beyond the ratification of the Nineteenth Amendment. Both groups used limited and discriminate civil disobedience to achieve their aims without causing wider unrest (Zinn, p13). However, there has been a correlation between the government’s increasing tendency to use or sponsor violence to resolve political crises during the past century and the infringement of citizens’ rights in order to silence dissent.

The US did not intervene in World War I for three years due to staunch public opposition and World War II was joined only slightly more readily. In contrast, by the early 21st century, military action abroad had become commonplace. US forces fought in Afghanistan, Iraq, Libya, Somalia, Syria, Yemen, and Pakistan during the Obama

administration alone. President Dwight Eisenhower warned that the US housed a military-industrial complex eager to promote violent conflict for financial gain. Lending credence to his assertion, 80% of retiring three or four-star generals and admirals of comparable rank gained highly lucrative employment with defense contractors or defense consulting firms during the Bush administration (Francis, 2013). In 2015, defense contractors were the top contributors to political action committees sponsoring electoral candidates (Dillow, 2015), which is a reason for concern given that the better-financed candidate wins 91% of the time (Lowery, 2014).

While it may be argued that citizens have freedom of speech and legal protest at their disposal to oppose war, the government has proven willing to abridge or suspend these rights. During World War I, many people were charged under the Sedition Act which made it illegal to publicly condemn the war. The Bush administration became notorious for enforcing arbitrary “free speech zones”: areas up to half a mile away from where federal officials were appearing that protestors were forced to restrict themselves to or face arrest and trial on federal charges (American Civil Liberties Union, 2018).

When the executive and legislative branches work together to wage war and suppress dissent, the only branch of government left to enforce the Constitution is the judiciary. However, the Supreme Court failed to oppose the Sedition Act or even consider the legality of the war in Vietnam when deciding cases related to protest charges (Zinn, p91). In recent years executive orders have been used to carry out extrajudicial assassinations against US citizens, a violation of the Sixth Amendment right to a fair trial.

All of this together is strong evidence to support the claim that civil disobedience is often the only avenue of representation available to citizens who oppose the undemocratic resolution of political crises with violence, which underpins the necessity of the duty to dissent.

2.3 Conflict in the duties of citizenship

It can be argued that while the duty to dissent exists, it only extends as far as authorized political activity because illegal acts conflict with the duty of citizens to be law-

abiding. Even conceding the value of the goals of suffragists and civil rights campaigners, the hardline stance could be adopted that those groups acted unwisely by stoking unrest and should have restricted themselves to legal activities. In fact, this view is consistently pervasive. Polls have found that 55% of US citizens think that Black Lives Matter protests actually undermine the cause of racial equality, similar to the 57% that reported their belief that sit-ins and freedom rides were setting back the cause of desegregation in 1961 (Izadi, 2016). This suggests a general prejudice against minority groups breaking the law for political reasons, regardless of the ultimate justice of their cause.

But there is no reason the duty to dissent must result in an *irresolvable* conflict of duties for citizens: the duty to dissent is defeasible, as is the duty to adhere to the law. Consider the position of those serving in the armed forces. Article 92 of the Uniform Code of Military Justice establishes that there is a duty to follow 'lawful' orders; many soldiers have been prosecuted for illegal acts carried out under orders. Charles Keenan was convicted of murder in 1981 after obeying a direct order to shoot an elderly civilian in Vietnam, and similar cases emerged from Iraq and Afghanistan during the 21st century. Despite the apparent contradiction, soldiers are at the same time duty bound to obey orders from their superiors yet liable for punishment if those orders are later judged to be unlawful. Soldiers must therefore maintain their status as morally autonomous actors, able to critically analyze orders that they receive and refuse them if they are illegal or unconstitutional.

The same reasoning should apply to citizens in a democracy. While there may be a perfect duty to be orderly in theory, in practice governments may be corrupt or incompetent and so citizens must be prepared to critically evaluate and potentially defy or obstruct them. German citizens who committed unjust but perfectly legal acts were rightfully brought to trial and punished at Nuremberg (Ferencz, p410). Although it could still be argued that protestors seeking justice should restrict themselves to legal methods out of respect for the necessarily slow-moving processes of representative democracy, this is difficult to defend given how little influence majority interests have on policy-making over time (Gilens and Page, p574). It's also difficult to defend the layers of sluggish bureaucracy that facilitate representative democracy as necessary given modern technology that could realize a more Athenian style direct democracy (Singer, p104).

Expediency is a relevant factor. The Sixth Amendment to the US Constitution recognizes the justice of ensuring that defendants are granted not just a fair trial, but a speedy one. Insisting that civil rights protestors should have restricted themselves to legal methods and waited patiently for equal rights to be extended to African Americans adds insult to the injury of their centuries-long struggle for justice. It also ignores the fact that individuals like Rosa Parks made instrumental contributions to the securing of those rights. The lawyer Harris Wofford, Jr. emphasized the value of the Montgomery Bus Boycott as political speech that made a positive contribution to public discourse. He argued that the legal system is not equipped to make systemic changes to society by itself, citing the words of Abraham Lincoln: “Public sentiment is everything. With public sentiment, nothing can fail; without it nothing can succeed” (Wofford, p60).

The further objection could be made that such cases still do not justify the duty to dissent’s legitimization of civil disobedience, because moral considerations along with self-interest should act as sufficient motivation. However, the need for a positive duty to dissent becomes pronounced in cases where a bystander or somebody otherwise indirectly related to an injustice is in a small minority able to take action, and also faces prohibitively steep punishment for doing so. When a matter of injustice is known to only a few people, the public benefit of their feeling compelled to act becomes pronounced. Whistleblowers like Chelsea Manning and Edward Snowden who leaked classified materials to the press to publicize unjust acts are a good example.

Manning exposed the killing of civilians in Afghanistan and Iraq by US forces, and Snowden revealed that the NSA was violating the Fourth Amendment rights of US citizens by operating a vast surveillance network in secret. Snowden brought surveillance into the purview of democratic institutions; the public cannot be opposed to an issue they have no knowledge of, and Congress cannot reasonably be relied upon to prevent government agencies from carrying out illicit activities if they abuse their position to do so in secret. Such cases support the claim that citizens of modern day democracies should consider it their positive duty to vigorously pursue exposing and ending situations of injustice, even when it means breaking the law.

I will now examine the limitations of the duty to dissent. As stated previously, I do not think it is required or desirable to specify precise limits on the types of civil disobedience that the duty to dissent endorses. It is better for an empowered and educated citizenry to make such ethical and practical decisions for themselves. But there are reasonable guidelines that ought to be followed, and relevant considerations to be weighed. Kimberley Brownlee described the importance of parsimonious response; civil disobedience is not justified when more orderly methods can achieve the same goal and shouldn't pose a greater danger than the threat it opposes (p186). For example, we would not be justified in bombing a government building to protest an unfair allocation of public spending in the budget.

It is also desirable to theorize a hierarchy of injustices by severity that merit different responses on a spectrum ranging from toleration to unlawful protest. Brownlee provides a well thought-out list of non-contingent human needs: "The categories of non-contingent basic need for persons include, first, the necessities for brute survival such as water, food, shelter, security, and companionship; second, basic skills and protections such as education; and third, protection of reasoning capacity, expressive agency, a *degree* of autonomy, social inclusion, respect, and recognition" (p190). It would be best to consider the failure to provide for these needs at the top of that hierarchy of injustices.

Finally, there are the limits of self-interest for citizens. It seems unfair to blame other people who were aware of the NSA's mass surveillance program for failing to expose it given how harshly whistleblowers are punished. Chelsea Manning was subjected to indefinite detention without trial for years, including solitary confinement. The duty to dissent bears differently depending on how much of a sacrifice an act of dissent constitutes, as well as how much social and political capital a citizen has. For instance, a highly educated upper-middle class person with all of their non-contingent needs met and the time and money to devote to protest action is under greater obligation to do so than somebody who is poor, under-served by the education system, and who must dedicate their time to securing their livelihood.

So long as these considerations are duly weighed against the public good that can come from breaking the law, the duty to dissent will not present an irresolvable conflict of citizenship. I will now consider the primary objection that may be raised.

3.1 Objection: Anarchy will descend if citizens feel entitled to break laws based on their personal assessments of injustice

There are serious objections that could be made to any civic obligation that endorses unlawful activities. The duty to be law-abiding is what makes participatory democracy functional – if citizens are entitled to break laws they disapprove of based on their personal ethical judgements, the value of using discussion to decide policy will be undermined. Compromises will be ignored by whichever group feels under-served or is simply obstinate enough to demand unfair advantages. This raises the threat of a breakdown of respect for law and consequently social order. Therefore, the duty to dissent, while it may exist to compel citizens to engage robustly in public discourse, cannot extend to law-breaking activities. After legitimate decision-making has taken place, the citizen's duty is to abide by it in service of social stability. Civil disobedience is only justifiable from the standpoint of personal conviction and always runs the risk of civic irresponsibility.

There are two ways to respond to this objection. First, it's a slippery slope fallacy; society can tolerate a certain degree of law-breaking without disintegrating. The duty to dissent has many reasonable limitations and wouldn't threaten stability if implemented in a measured way. Besides, the potential threat of social instability lies at the extreme end of a range of outcomes which includes at its opposite pole the evil of an authoritarian government. Beyond infringing on the rights of minority groups, the iniquities of an illiberal state can produce existential crises such as those posed by war and climate destabilization. Second, personal judgements are not an illegitimate basis for political participation, including civil disobedience. The community's common sense of justice is not unimprovable and requires input from citizens to be maintained.

3.2 Slippery slope

The duty to dissent could be accused of providing the foundation for mass disorder. However, society already tolerates a certain level of illegal activity without descending into

chaos. Some laws are disobeyed out of convenience, such as pedestrians who cross the road outside of designated zones and times. Other laws fall into disfavor, particularly those concerning personal morality, and so are generally flouted. For example, more than twenty states in the US classify adultery as a crime. In five states it is classed as a felony and in Michigan it can carry a life sentence, although nobody has been charged with adultery there since 1971 (Jarvie, 2007).

Citizens already practice a qualified disregard for the law in situations where it seems to be routinely flouted, rarely enforced, or where it is an example of gross overreach. When conscious of engaging in lawbreaking, people likely perform a cost benefit analysis and decide to proceed or desist based on factors such as how likely they are to be caught, how severe the punishment would be, and whether or not they consider the law to be an important or meaningful one. The laws against adultery and recreational drug use are prime examples of laws that are frequently broken because people disagree with them in principle or don't really think they will be punished. Limited and discriminate lawbreaking is therefore compatible with the maintenance of the social order.

It can reasonably be responded that endorsing a political duty to practice civil disobedience is not at all like tolerating limited instances of unlawful behavior. Herbert Storing argued that civil disobedience cannot be safely endorsed: "The broad result of the propagation of civil disobedience is disobedience. The question then becomes whether the encouragement of disobedience endangers law and civil society, and the answer seems clear enough [...] that it does" (p94). Storing expressed cynicism that disobedience will always be conducted with respect to the rule of law, particularly in the cases of "the desperately poor, the degraded, and the bitter" (p94). This argument can be dismissed as a slippery slope fallacy – Storing provides no reason for thinking that socially sanctioned civil disobedience will lead to a breakdown of law and order. He does not distinguish between acts that are dangerous, like bombing a public building, and those that simply inconvenience citizens or authorities during their daily lives, like sit-ins or marches that disrupt the flow of traffic.

Although less opposed to the practice of civil disobedience than Storing, Raz makes a related argument: that the possibility of inspiring others to protest for their own causes is a reason to limit the legitimacy of civil disobedience even when one's cause is just (p269). But

besides the fact that our example could inspire others to join our cause, we may welcome protests from others with causes we had not previously been convinced of and come to champion those causes ourselves. We cannot expect to agree with the goals of every act of dissent, but we should value the pursuit of justice for its own sake. There is also the Gandhian “safety valve” argument: the idea that civil disobedience is an appropriate channeling of dissatisfaction that may otherwise spill over into revolutionary fervor. It’s rational to prefer that those we disagree with express themselves through rallies and marches rather than with militancy and violence (Haksar, p152).

Storing and Raz both make stability a goal above justice, prioritizing the duty that citizens have to keep the peace. However, only an authoritarian government antithetical to liberal values can ensure that no unwelcome dissent ever takes place. Storing tips his hand when he refers to those suffering in society; the implication is that a certain amount of inequity and injustice is liable to arise as a side product of any functioning society, and our concern should be making sure that even those with legitimate issues do not threaten social stability. There are two ways to respond to this. First, this attitude assumes that stability can be easily maintained in the face of injustice. It’s the imposition of unjust conditions, not the practice of civil disobedience, that will produce citizens more likely to commit crimes and refuse to contribute positively to society, as eloquently expressed by James Baldwin: “the most dangerous creation of any society is the man with nothing to lose” (p67).

Second, the duty to dissent does not entitle citizens to bring about a social order exactly to their liking, at any cost. It compels them to pursue justice outside of legal channels, because of the very real danger that corruption or incompetence will pose a lethal threat to some or all members of the community. There is the threat of authoritarianism, which could severely threaten the non-contingent needs of many citizens. Most German citizens did not profit from the Nazi regime; its expansionist policies led to the country being invaded, causing huge loss of life and devastation of infrastructure, whereupon competing global powers kept it partitioned for decades. Even worse, actions taken or failed to be taken by the government can threaten the conditions necessary for human life to flourish.

The global proliferation of nuclear weapons and the environmental destabilization caused by climate change are two such examples. Writing in harsh condemnation of the existence of nuclear weapons, Bertrand Russell warned of the dangers inherent in trusting the government to operate with neutrality: “The state makes the laws and, unless there is a very vigilant public opinion in defense of justifiable liberties, the state will make the law such as suits its own convenience, which may not be what is for the public good” (p155). Scientific evidence has shown for decades that certain human activities are threatening the stability of our planet’s ecology and could mean the end of our way of life or even the extinction of our species. Yet the world’s governments have set regulatory goals far below scientists’ recommendations and then failed to meet even those in favor of maintaining the status quo, privileging existing industries over human welfare.

These examples demonstrate that, quite apart from civil disobedience posing a danger to society, an excess of obedience could be the more credible threat. Even in the worst-case scenario where civil disobedience leads to mass disorder, that may be rationally preferred to the consequences of tolerating injustice placidly or proceeding in an orderly fashion to our doom.

3.3 Improving the common sense of justice

The second way to address this objection is to reject the conventional claim that personal moral convictions are illegitimate motivations for civil disobedience. Rawls stipulated that the only legitimate justification for civil disobedience is to protest laws or policies that conflict with the common sense of justice shared by a society (p365). However, due to the ineffable nature of society’s common sense of justice, there are good reasons to think political action may be justified or even necessary when a citizen’s aims appear to conflict with it. Singer argued that we shouldn’t consider the common sense of justice to be immutable: “Maybe we cannot ourselves see improvements in a particular society’s conception of justice, but we surely cannot rule out the possibility that in time it may appear defective, not only in its application, but in the fundamentals of the conception itself” (p89).

In effect, Rawls has set ‘improving the common sense of justice’ outside the purview of citizens’ active political participation. This would mean that campaigning for heightened

protections for animal welfare is not legitimate simply because society is not overly concerned with it at present (Singer, p90). But the common sense of justice of a society is informed by the political decisions that have been reached, and in turn plays a part in the political education of the next generation of citizens. Thomas Jefferson wrote that the US Constitution should be replaced every 19 years, to allow it to continue reflecting the shifting values of society (p385). Consider the difficulties citizens would have in responsibly exercising their right to vote if they were supposed to defer to the existing common sense of justice. Given that voting is meant to establish which candidates' proposed policy changes are favored by the electorate, it would be paradoxical to ask citizens to vote only in support of what is already comprehensively judged to be just.

In response, it's possible to argue that this paradox is not an issue in the case of voting because voting is legitimate political participation, whereas civil disobedience is not. But this logic cannot be applied to undermine the duty of dissent without begging the question. If political participation such as voting may be justified on the grounds of personal convictions because it is legitimate, it cannot be argued that the same does not apply in the case of civil disobedience without first designating it as illegitimate. It is just this point that I seek to dispute. Either the common sense of justice should be fixed and not allowed to evolve, or it is permissible to seek to alter it through legitimate political participation. Whether or not civil disobedience falls outside of the definition of legitimate political participation is a separate matter.

Some people would eagerly bite the bullet and endorse the prospect of preserving an immutable common sense of justice, despite the difficulty of defining it. Even the originalists who hold that the intentions of the authors of the US Constitution are of paramount importance when applying it to settle legal disputes disagree about how best to interpret the text of the Constitution. But supposing agreement could be reached on a precise definition of the common sense of justice, we cannot take at face value that laws or policies presented as in keeping with it truly are. After all, politicians have a vested interest in presenting their policies as representative of the will of the people. Politicians tend not to campaign on a platform of openly opposing the will of their constituents, yet the will of most US citizens is often conspicuously absent from government policy-making (Gilens and Page, p564). There

is also reason not to accept that even widely expressed viewpoints are truly representative of most citizens.

Take public opinion of gun control legislation. The National Rifle Association is a hugely influential group that lobbies Congress to prevent the introduction of such measures. It presents itself as representing the views of its gun-owning members and defending the constitutional rights of all citizens. The NRA spends ten times as much as the largest group lobbying for gun control legislation, and during election years spends tens of millions funding negative ads undermining candidates they perceive as in favor of gun control (Weiss and Gould, 2018). Citizens pondering whether civil disobedience aimed at changing gun laws is justifiable could easily be misled, by media campaigns and politicians who sell themselves as champions of gun rights, into thinking that widespread gun ownership is one of the common values of US society.

However, polls have found that 84% of US citizens, as well as a slim majority of NRA members, actually support the introduction of the universal background checks that the NRA opposes so vehemently (Brown and Igielnik, 2017). The fact that the NRA exerts so much more political influence than groups that support gun control, combined with the fact that it does not really represent the interests of its members let alone most US citizens, means that they actively distort public discourse. Interest group-based lobbying is perfectly legal, so gun control is not the only issue potentially clouded in the public discourse due to outsized influence from wealthy organizations. This kind of difficulty in accurately perceiving the genuine common sense of justice of a society provides a strong reason not to grant it primacy in determining the legitimacy of an act of civil disobedience.

Going further still, even if the genuine common sense of justice of a society could be agreed upon and was plainly evident, we still should not trust that it is truly representative of the *autonomous* will of citizens. In theoretical discussions citizens are often presumed to be logical, duly guided by self-interest and a rational assessment of outcomes. On the contrary, people can be short-sighted and display cognitive biases even when operating in good faith. Their political views can be informed more by prejudice and ideology than by a rational appraisal of the available evidence. In the context of women's preferences constructed in male-dominated societies, Carol Hay points out that "even those choices that appear to be

unproblematic cases of simple preference-satisfaction are suspect. For if oppressive forces have perverted the content of a preference, it's hard to see how that preference can really be called an autonomous one" (p100).

Social discourse is too polluted with propagandistic claims from various industries and career-oriented politicians to imagine that citizens' stated preferences accurately reflect their considered response to the relevant facts of the matter. Instead of being limited by any interpretation of the existing common sense of justice, we ought to allow citizens to prioritize their own moral and rational assessments in political decision-making – that way, the law may continuously evolve to more closely reflect shared ideals of justice. As Wofford put it, "The law is not some final arbiter. It is the voice of our body politic with which we must remain in dialogue" (Wofford, p66).

Conclusion

I have argued that a defeasible duty to dissent exists for the citizens of liberal participatory democracies, conferring a civic obligation to practice civil disobedience. The two primary justifications are to provide a safeguard against the erosion of liberal values caused by corruption or incompetence, and to protect the rights of minority groups that are fundamentally ill-served by the democratic model of majority rule. I close with a quotation from Clara Urquhart on the Nuremberg trials that illustrates the indispensability of a positive civic duty to disobey lawful injustice: "There it was agreed that obedience to unethical laws was judicially and morally wrong. At his trial Adolf Eichmann pleaded: 'It was not I who persecuted the Jews; this was done by the government. I accuse the government of abusing my obedience. Obedience has always been praised as a virtue.' But obedience without consent – the consent of conscience – can never be a virtue" (p11).

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